

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**



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Company for Adoption of Electric  
Revenue Requirements and Rates  
Associated with its 2017 Energy Resource  
Recovery Account (ERRA) and  
Generation Non-Bypassable Charges  
Forecast and Greenhouse Gas Forecast  
Revenue and Reconciliation. (U39E).

A.16-06-003  
(Filed June 1, 2016)

**RESPONSE OF MERCED IRRIGATION DISTRICT  
AND MODESTO IRRIGATION DISTRICT**

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In accordance with Rule 2.6 of the Rules of Practice and Procedure of the California Public Utilities Commission (“CPUC” or “Commission”), Merced Irrigation District (“Merced ID”) and Modesto Irrigation District (“Modesto ID,” together the “Districts”) file this Response to the Application of Pacific Gas and Electric Company (“PG&E”) for Adoption of Electric Revenue Requirements and Rates Associated with its 2017 Energy Resource Recovery Account (“ERRA”) and Generation Non-Bypassable Charges Forecast and Greenhouse Gas Forecast Revenue and Reconciliation (“Application”). The Districts’ Response addresses the Ongoing Competition Transition Charge (“CTC”) and the Cost Allocation Mechanism (“CAM”) forecast revenue requirements, and the related rates for municipal departing load (“MDL”), proposed in the Application. The Districts do not necessarily agree or disagree with the other methodologies, analyses, or conclusions set forth in PG&E’s Application and accompanying testimony.

Merced ID and Modesto ID are publicly owned utilities (“POUs”). Both are customers of PG&E and competitors in the provision of electric service to customers in California’s central valley, and as such have an interest in the matters discussed herein.<sup>1</sup>

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<sup>1</sup> Under current Commission decisions, the cost responsibility surcharge for MDL, including Ongoing CTC, is calculated differently for MDL than it is for other customers. Specifically, the cost responsibility surcharge calculation for MDL does not include the value of all below market resources, with the result that MDL pays a higher cost responsibility surcharge, including Ongoing CTC, than bundled and direct access customers. The Districts have actively participated in most of PG&E’s ERRA and Ongoing CTC Application proceedings (beginning in 2004) and other proceedings relating to

## **1. Introduction and Summary of Position.**

The categories and calculation of nonbypassable charges (“NBCs”) have been addressed by the Commission in a number of decisions over the years.<sup>2</sup> The framework that has evolved for calculating the various NBC components and determining the categories of departing load, including MDL, to which they are applied is extremely complicated. It is important to ensure that all NBCs are being derived and applied in a manner that is consistent with law and relevant Commission decisions. Through participation in this proceeding, the Districts seek to (1) ensure that Ongoing CTC is properly calculated, and (2) clarify the nature and extent of any New System Generation Charge PG&E proposes to impose on incremental Transferred MDL. As a preliminary matter, the Districts reiterate the need to set an end date or develop a plan for phasing out Ongoing CTC.

## **2. Ongoing CTC Has Outlived Its Intended Purpose.**

Transferred MDL customers of the Districts are required to pay the Ongoing CTC. Ongoing CTC affects MDL customers who departed investor owned utility (“IOU”) service up to 18 years ago. PG&E’s Ongoing CTC rate has fluctuated widely over the years, from as low as \$0.00013 per kWh in 2007 to \$0.00703 per kWh in 2004. The current Ongoing CTC rate for large customers is approximately \$0.00187 to \$0.00216 per kWh.<sup>3</sup> The proposed 2016 rate for large customers is approximately \$0.00082 to \$0.00097.<sup>4</sup> These wide fluctuations create significant uncertainty for customers. They are hard to plan for and manage during good economic times, and they are particularly harmful during the ongoing economic downturn that persists in large areas of the state.

The law authorizing Ongoing CTC did not contemplate open-ended cost recovery. It is past time to revisit the principles behind Ongoing CTC. Ongoing CTC was intended to address a very specific circumstance – the transition to a competitive generation market.<sup>5</sup> When Assembly Bill (“AB”) 1890 was adopted, there was no concept that Ongoing CTC would extend

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calculation of the cost responsibility surcharge for MDL. While the Districts do not repeat their objections to the calculation of the cost responsibility surcharge, including Ongoing CTC, for MDL here, they do not waive those objections.

<sup>2</sup> The Districts have in many Commission proceedings expressed concern about the Commission’s authority to impose certain NBCs on MDL in the first instance. The Districts do not repeat those concerns or objections here; however, they do not waive those objections.

<sup>3</sup> See PG&E Rate Schedule E-20.

<sup>4</sup> PG&E Testimony, p. 15-4, Table 15-2.

<sup>5</sup> Cal. Pub. Util. Code § 367.

indefinitely. Under AB 1890, most CTC was either to be collected by the end of 2001 or foregone.<sup>6</sup> The Legislature allowed certain costs to be collected after that date, under specific limited circumstances. This category of CTC is referred to as Ongoing CTC. In general, Ongoing CTC is limited to the cost of past power purchase agreements that were being collected in rates on December 20, 1995, and then only for so long as the original term of the agreement.

The circumstances that prompted the Legislature to authorize limited cost recovery through CTC and Ongoing CTC are long past. The transition to a competitive market ended over 10 years ago when the Commission suspended the ability of customers to enter into direct access contracts.<sup>7</sup> The suspension remains in place, except for the limited increases in direct access load prescribed in 2009 legislation, Senate Bill 695. Even with this limited resumption of direct access, the IOUs continue to be responsible for procuring power for their customers.

The Commission has declined in a number of proceedings to consider setting an end date or schedule for phasing out Ongoing CTC. For example, the Districts have requested in several prior ERRAs and generation nonbypassable charge proceedings that the Commission set an end date or develop a plan for phasing out Ongoing CTC. Each time, the Commission determined that that issue was outside the scope of the proceeding.<sup>8</sup> In D.12-12-008, issued in PG&E's 2013 ERA application proceeding, the Commission found that the Districts' concerns "are addressed in the recently filed Petition for Rulemaking" (referring to the Marin Energy Authority ("MEA"), Alliance for Retail Energy Markets ("AREM"), *et al.* Petition).<sup>9</sup> The Commission denied the Petition in D.13-08-023.<sup>10</sup> The Commission also declined to consider the issue in Phase 1 of PG&E's 2014 General Rate Case ("GRC"), stating that the "proposed phase-out of CTC is an industry-wide issue" and outside the scope of the GRC proceeding.<sup>11</sup>

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<sup>6</sup> Cal. Pub. Util. Code § 367(a).

<sup>7</sup> D.01-09-060.

<sup>8</sup> See, e.g., D.08-12-029, Finding of Fact 8; Scoping Memo and Ruling of Assigned Commissioner in A.09-06-001 (August 17, 2009), p. 4; Scoping Memo and Ruling of Assigned Commissioner in A.10-05-022 (August 4, 2010), pp. 3-4; D.13-12-043, p. 13; Scoping Memo and Ruling of Assigned Commissioner in A.15-06-001 (August 5, 2015), pp. 5-6.

<sup>9</sup> D.12-12-008, p. 12, Conclusion of Law 8, and Ordering Paragraph 9.

<sup>10</sup> However, the Commission indicated that "[i]f appropriate, Energy Division staff may hold a workshop to develop a process for addressing any specific departing load charges or other fee mechanisms that may benefit from review due to significant changes since the charge's development." (D.13-08-13, p. 17.) As explained herein, the circumstances that drove the Legislature to adopt limited cost recovery through Ongoing CTC no longer apply.

<sup>11</sup> Assigned Commissioner's Ruling and Scoping Memo (A.12-11-009), p. 4.

The Commission has stated its position that CTC may not be terminated without legislation.<sup>12</sup> The Districts respectfully disagree with the Commission. Public Utilities Code section 367 provides the Commission with discretion to identify and determine what may be collected as CTC and Ongoing CTC:

***The commission shall identify and determine those costs and categories of costs*** for generation-related assets and obligations, consisting of generation facilities, generation-related regulatory assets, nuclear settlements, and power purchase contracts, including, but not limited to, restructurings, renegotiations or terminations thereof approved by the commission that were being collected in commission-approved rates on December 20, 1995, ***and that may become uneconomic as a result of a competitive generation market***,<sup>13</sup> in that these costs may not be recoverable in market prices in a competitive market, and appropriate costs incurred after December 20 1995, for capital additions to generating facilities existing as of December 20, 1995, ***that the commission determines are reasonable and should be recovered***, provided that these additions are necessary to maintain the facilities through December 31, 2001.

(Emphasis added.)

The continued imposition of Ongoing CTC creates tremendous rate uncertainty and has a chilling effect on competition, to the detriment of California customers. PG&E's current Application once again seeks Ongoing CTC recovery for contracts that PG&E has previously indicated could last indefinitely. Accordingly, the issue of whether Ongoing CTC should continue indefinitely or terminate as of a date certain is well within the scope of this proceeding. If the Commission disagrees with the Districts that this issue is squarely within the scope of this proceeding, then the Districts respectfully request that the Commission identify a process for determining an end date or developing a plan for phasing out Ongoing CTC.

### **3. Calculation of Ongoing CTC, Including the 2016 Carryover Balance, Should Be Carefully Evaluated.**

PG&E proposes a 2017 Ongoing CTC revenue requirement of approximately \$100 million, including a 2016 carryover balance of approximately (\$11) million.<sup>14</sup> The calculation of these amounts should be carefully evaluated, including whether all of the contracts for which PG&E proposes to collect above market costs through Ongoing CTC are appropriately identified as eligible for Ongoing CTC. Through participation in this proceeding, the Districts seek to

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<sup>12</sup> See, e.g., D.13-08-023, Conclusion of Law 5.

<sup>13</sup> As noted above, the competitive generation market envisioned in section 372 was suspended over 10 years ago and the suspension remains in place except for the limited increase in direct access authorized in 2009 legislation.

<sup>14</sup> PG&E Testimony, p. 9-15, Table 9-15.

ensure the correct calculation of the 2017 Ongoing CTC forecast revenue requirement, including the 2016 carryover balance. The Districts plan to commence discovery soon on this issue.

**4. PG&E Should Specifically Identify the Vintage(s) of Incremental Transferred Customers Upon Whom PG&E Proposes to Impose the New System Generation Charge, and the Relevant Charge Amount.**

In Decision (“D.”) 10-12-035, the Commission approved the QF/CHP Program Settlement Agreement, which provides a detailed framework for a QF/CHP Program in California. Under D.11-07-010, which granted a petition for modification of D.10-12-035, NBCs resulting from the QF/CHP Program to apply to Transferred and New MDL as follows:<sup>15</sup>

Transferred MDL Customers who have departed IOU service as of the Settlement Effective Date will not be responsible for any non-bypassable charges (NBC) associated with the [QF/CHP Program] Settlement Agreement, but will remain responsible for whatever other charges they will incur at the time of departure under the Status Quo (e.g., Ongoing Competition Transition Charge, etc.).

Transferred MDL Customers who depart IOU service after the Settlement Effective Date will be responsible for any NBC for Settlement PPAs, namely, an NBC associated with PPAs entered into to meet the 3,000 MW Target established in Section 5.1.1 of the Settlement Agreement (CHP Settlement PPAs) executed before the date of the Transferred MDL Customer’s departure (i.e., on a vintage basis). The NBC for CHP Settlement PPAs will be determined by comparing the cost of the CHP Settlement PPAs to market value of those using the market price benchmark adopted in R.07-05-025 or subsequent Commission Proceeding. If the difference between the cost of CHP Settlement PPAs and their market value is positive (i.e., there are above-market costs), these costs will be allocated through the NBC for CHP Settlement PPAs. If the difference between the cost of CHP Settlement PPAs and their market value is negative (i.e., the cost of the CHP Settlement PPAs is below market) the negative amount will be tracked in a memorandum account and be available to offset future above-market costs of CHP Settlement PPAs.

New MDL Customers will not be responsible for any NBC associated with the Settlement Agreement, including but not limited to the NBC for CHP Settlement PPAs. New MDL Customers will continue to be responsible for whatever other charges they would incur under Status Quo (e.g., Ongoing CTC, etc.).

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<sup>15</sup> D.11-07-010, pp. 9 and 10, and Ordering Paragraph 2. There are two categories of MDL. Transferred MDL refers to customers who had previously received generation and distribution services from an investor owned utility (IOU), but are now receiving service from a POU. New MDL is load that has never been served by an IOU but is located in an area that had previously been in the IOU’s service territory (as that territory existed on February 1, 2001) and was annexed or otherwise expanded into by a POU. (See, e.g., D.11-07-010, n. 1.)

As set forth above, under D.11-07-010, only Transferred MDL customers who depart IOU service after the Settlement effective date will be responsible for any QF/CHP Program-related NBCs.<sup>16</sup> Those NBCs are to be calculated on a vintage basis, which means a separate revenue requirement and rate should be developed for affected Transferred MDL customers depending on the year in which the Transferred MDL customers depart. In Table 2-2 of its Testimony, PG&E appears to indicate that 4,911 MWh of incremental Transferred MDL will be subject to an NBC under D.11-07-010, the New System Generation Charge (also referred to as the CAM). However, PG&E does not set forth the vintage(s) of such customers, or the proposed revenue requirement or rates for vintaged incremental Transferred MDL customers.<sup>17</sup> The Districts request that the Commission require PG&E to provide that information. The Districts plan to soon commence discovery regarding this important issue.

### **5. Schedule and Hearings.**

Hearings in this proceeding may be required to address the factual issues described herein and possibly other issues. For example, hearings may be necessary to examine calculation of Ongoing CTC revenue requirement and rates, and the nature and extent of any New System Generation Charge PG&E proposes to impose on incremental Transferred MDL. The Districts have no comment at this time regarding PG&E's proposed schedule.

### **6. Communications.**

All correspondence, pleadings, orders, and notices in this proceeding should be sent to the following:

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and:

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<sup>16</sup> The Settlement effective date is November 23, 2011.

<sup>17</sup> See, e.g., PG&E Testimony, p. 9-18, Table 9-6.

Information Only:

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**7. Conclusion.**

The Districts appreciate the Commission's consideration of the important issues raised in this Response.

DATED: July 6, 2016

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